In the Punjab and Haryana High Court, Chandigarh.

CR No.6631 of 2006
Date of decision:08.10.2007.

Anil Kumar ... Petitioner.

Versus

Harnek Singh ... Respondent.

Present: Mr.Amit Rawal,Advocate, for the petitioner.

Mr.RL Batta, Senior Advocate, with
Ms. Geeta Sharma, Advocate, for the respondent.

PERMOD KOHLI, J. (Oral):

This revision is directed against the order dated 06.12.2006 passed by the learned Rent Controller, Ludhiana, declining the request of the petitioner to declare RW-9-Dalwinder Kaur as hostile and to cross-examine the said witness. From the statement of RW-9 recorded by the learned Rent Controller,it appears that this witness has withheld the truth from the Court. On a specific question asked about the existence of sale deed, this witness admits that the sale deed is in her possession. When she was asked to produce the sale deed, she has responded by saying that she do not know whether she can produce the said sale deed or not. She has further stated that she cannot produce the sale deed. This clearly indicate that this witness is suppressing the truth from the Court. Section 154 of the Evidence Act, permits the Court to declare a witness as hostile and permit the party tendering the witness to subject him/her to cross-examination.

The conditions where a witness can be declared hostile by the Court are laid down in the case of Rabindra Kumar Dey Vs. State of Orissa, AIR 1977, Supreme Court, 170, which are as follows:-

> "A party will not normally be allowed to cross-examine its own witness and declare the same hostile unless the Court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or where the Court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth."

The above noted statement of RW-9 is sufficient to draw an inference that she is with-holding the truth from the Court. There is apparent element of hostility towards the petitioner for one or the other reason. The learned Rent Controller has, however, observed that there is nothing to indicate that the witness is suppressing the truth. These observations are not consonance with the conduct and statement of witness. The statement noticed by me herein above is sufficient to formulate an opinion that the witness in question is with-holding the truth from the Court and should be declared hostile.

In view of the above, this revision petition is allowed. The impugned order is, accordingly, set aside. RW-9, Dalwinder Kaur is declared hostile and the petitioner is permitted to cross-examine her.

The parties through their counsel are directed to appear before the learned Rent Controller, Ludhiana, on 01.11.2007, thereafter, learned Rent Controller will summon the witness for further cross-examination.

08.10.2007 (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? YES/ NO